

J8QHMOOC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

18 Cr. 759 (RMB)

6 JAMES MOORE,

7 Conference

8 Defendant.

9 -----x
10
11 New York, N.Y.
12 August 26, 2019
13 12:24 p.m.

14 Before:

15 HON. RICHARD M. BERMAN,

16 District Judge

17 APPEARANCES

18 GEOFFREY S. BERMAN
19 United States Attorney for the
20 Southern District of New York

21 MARTIN BELL
22 VLADISLAV VAINBERG
23 Assistant United States Attorneys

24 MICHAEL GRUDBERG
25 Attorney for Defendant

26 ALSO PRESENT: STEPHANIE SCANNELL-VESSELLA, BOP Counsel
27 DR. ELISSA MILLER, Chief Psychologist MCC

J8QHMOOC

1 THE COURT: Let me recount some of the background
2 factors that led up to today's conference, and then we'll go
3 from there.

4 On June 7 of this year, 2019, Mr. Moore was convicted
5 following the jury trial of two counts: (1) conspiracy to
6 commit wire fraud and (2) the substantive count of wire fraud.
7 Sentencing was scheduled initially for September 16 at
8 10:00 a.m.

9 On June 21, 2019, I received a pro se submission from
10 Mr. Moore in which he alleged that his counsel was ineffective,
11 and he requested his release from incarceration.

12 By memo dated June 24, 2019, I denied the application
13 for release and directed Mr. Garvin, who was his counsel at the
14 time, and the government to respond to Mr. Moore's pro se
15 submission.

16 By letter dated June 26, 2019, Mr. Garvin moved for
17 leave to withdraw as counsel of record for Mr. Moore. By
18 motion dated July 19, 2019, Messrs. Michael Grudberg and Robert
19 Heim of the law firm Tarter Krinsky & Drogin advised the Court
20 that they had been engaged to represent Mr. Moore, and they
21 moved to substitute themselves as counsel in the case and for
22 the Court to grant permission for Mr. Garvin to withdraw as
23 counsel.

24 I did, in fact, grant the application on July 22,
25 2019, and I set a conference for July 25, 2019. During that

J8QHMOOC

1 conference, I set the date of September 17, 2019, at noon to
2 permit new counsel to familiarize themselves with the case. I
3 also indicated that I would reset the sentencing date at the
4 next court conference.

5 More recently, on August 21, 2019, I received two pro
6 se submissions from Mr. Moore. One alleges that he is in
7 imminent danger of being killed in here. I guess he's
8 referring -- not I guess. He's referring to the MCC, and he
9 goes on to say, "They've come close two or three times now. I
10 need moving anywhere out of this prison urgently. Please help
11 me."

12 I endorsed that letter as follows. I wrote that the
13 BOP and the Assistant United States Attorneys please look into
14 this matter forthwith and advise me of their findings.
15 Conference will be held on Monday, August 26, which is today,
16 at 11:00 a.m. We've rescheduled the matter for noon. On
17 August 22, I think Ms. Murray of my chambers advised BOP and
18 counsel of the change in time of the conference.

19 On August 21, 2019, Bureau of Prisons staff attorney
20 Stephanie Scannell-Vessella advised Ms. Murray that the BOP's
21 psychologists asked them to reach out to Mr. Moore's defense
22 counsel to consider a forensic study for Mr. Moore. That's
23 something we'll talk about a little further in a moment.

24 The other pro se submission requests permission to
25 appear pro se effective immediately. I think we'll start,

J8QHMOOC

1 actually, with that application in a minute or two.

2 Then on August 22, 2019, I received three pro se
3 submissions from Mr. Moore. The first two were repetitive of
4 the prior pro se submissions. The third describes in some
5 depth or detail -- "depth" is not the correct word -- in some
6 detail threats, I guess would be the best way to describe it,
7 that he feels he is receiving from outside the prison or
8 perhaps from within the prison. I don't know where, actually,
9 or how they're being transmitted, but anyway, I directed BOP,
10 the assistants again, and defense counsel to respond, and which
11 they have done.

12 So the first question here I think we have to deal
13 with is Mr. Moore's application to appear pro se. What's the
14 basis of that, Mr. Moore?

15 THE DEFENDANT: Thank you, your Honor. I think at
16 this point in time it would be in my best interest to thank
17 Mr. Grudberg.

18 THE COURT: You don't have to go into that. I just
19 want to know the basis of you feeling you're able to represent
20 yourself pro se in this proceeding.

21 THE DEFENDANT: I think for today's hearing --

22 THE COURT: Are you a lawyer, first of all?

23 THE DEFENDANT: No, your Honor, I'm not.

24 THE COURT: Do you have any legal training?

25 THE DEFENDANT: None whatsoever, your Honor.

J8QHMOOC

1 THE COURT: So how is it that you feel that you can
2 represent yourself in today's proceeding or at sentencing,
3 which is coming up?

4 THE DEFENDANT: Being quite frank, your Honor, the
5 reason that I sent the pro se letters, I marked them as such
6 was so that I knew that letters from me could get out the
7 facility, and that's why I marked them in the way that I marked
8 them on the envelopes.

9 THE COURT: I'm just asking a simple question of what
10 it is in your background that makes you believe -- you have a
11 right, by the way, to represent yourself. Frankly, if you ask
12 me, which you're not, and that's perfectly fine, I think it's a
13 bad idea, but I'm trying to be persuaded by you that it's a
14 good idea.

15 THE DEFENDANT: Thank you, your Honor.

16 At the risk of being accused of wasting the Court's
17 time, which I would never want to do, the pro se letters were
18 sent, from my perspective, for want of a better expression a
19 life raft, as a way to ensure that I could get a message
20 outside. My intention was then to ask your Honor to consider
21 appointing me a Federal Defender.

22 THE COURT: Well, so there's a whole process of that.
23 I don't know that you qualify for having a federal defender,
24 and I don't know why you wanted to relieve this counsel. This
25 would be your third counsel. My recollection from the facts

J8QHMOOC

1 that came out during the course of the trial suggest that you
2 would not be qualified to have Federal Defenders represent you,
3 but put that aside for the moment. You'd have to fill out an
4 application -- affidavit, by the way, in which you'd have to
5 indicate your resources, and if you qualify, we could take the
6 next step. But it's hard for me to -- well, just that.

7 What's wrong with your current attorney?

8 THE DEFENDANT: I just feel, your Honor, right now
9 that it's in my best interest to change attorneys and make a
10 clean break from everybody that's been associated with me
11 previously.

12 THE COURT: All right. Counsel, did you want to --
13 thanks, Mr. Moore.

14 THE DEFENDANT: Thank you.

15 MR. GRUDBERG: Thank you, your Honor.

16 Under the circumstances, I don't think it's wise for
17 me to say very much. I would just say, in terms of the factual
18 background of the last three or four days since your Honor
19 issued the order, counsel for the MCC has worked with us to try
20 to arrange a telephonic contact. I happened to be out of town
21 for family reasons. That could not go forward. I don't
22 understand all the whys and wherefores of that. I did have a
23 brief opportunity to speak with Mr. Moore before we came out
24 today, but other than that, I think because of the uncertainty
25 as to whether it would be appropriate for me to advocate to the

J8QHMOOC

1 Court other than to answer factual questions for your Honor
2 consistent with the privilege and to the best of my ability, I
3 think I would prefer not to take any position at this point.

4 THE COURT: Whether you want to remain or not?

5 MR. GRUDBERG: As I said to Mr. Moore, we are prepared
6 to remain, subject to working out the other issues on the
7 Court's agenda for today and, of course, subject to Mr. Moore's
8 willingness, but I am not in this moment making any motion to
9 withdraw based upon any conflict theory as things now stand.

10 THE COURT: OK.

11 MR. GRUDBERG: Thank you, Judge.

12 THE COURT: I don't know if anybody else feels able to
13 respond, but if anybody has something that they think they can
14 say.

15 MR. VAINBERG: The government has no position.

16 THE COURT: Some of your letters, Mr. Moore, have
17 been rather extreme. Can you hear me?

18 THE DEFENDANT: Not quite, your Honor. I'm sorry.

19 THE COURT: Some of your letters to the Court have
20 been rather extreme and somewhat alarming. I don't know if
21 there's any basis in fact to some of the things you're saying,
22 and I still don't really understand why someone who has
23 had retained -- this is the second set of counsel -- why one
24 would think that they need new counsel, but that's obvious that
25 you do. As I say, if you qualify for new counsel, appointed

J8QHMOOC

1 counsel, it's not clear to me that they would or could be
2 Federal Defenders. We'd have to ask them, but if you qualify,
3 you'd have to take whomever was up on the, what we call, CJA
4 list for that day, just so you know how the process works. We
5 can defer that issue for the moment.

6 I'm going to ask Mr. Grudberg, and I'm sure he'll
7 consent, to remain for the moment, certainly for today's
8 proceeding, and going forward till we sort of get to the bottom
9 of this matter.

10 In the materials there are these allegations about
11 threats to Mr. Moore's safety, etc., etc., and so we did ask
12 the Bureau of Prisons to look into this matter, and I would
13 like to ask them what they conclude or found with respect to
14 the allegations that his life is in danger and he has to be
15 moved, first of all, holding aside the issue about his legal
16 representation for the moment.

17 MS. SCANNELL-VESSELLA: Thank you, your Honor.
18 Stephanie Scannell-Vessella for the federal Bureau of Prisons.

19 The SIS, Special Investigative Services, they're the
20 department that generally investigates any allegations of
21 threats against inmates and other situations at the prison.
22 They first encountered Mr. Moore on August 2. That was after a
23 referral from psychology. Mr. Moore had expressed some
24 concerns with his safety. So the SIS lieutenant interviewed
25 him, and he told our SIS lieutenant that he didn't feel safe at

J8QHMOOC

1 MCC because -- I'm sorry.

2 THE COURT: No, no, it's fine. Go ahead.

3 MS. SCANNELL-VESSELLA: He didn't feel safe at MCC due
4 to the English mafia attempting to have him killed. And the
5 SIS lieutenant obviously dug a little bit with that, and
6 Mr. Moore said he believed his attorney was involved in the
7 plot as well as some of the staff and inmates. He also alleged
8 that the royal family was involved.

9 THE COURT: This was at the time of prior counsel's
10 participation or Mr. Grundberg's?

11 MS. SCANNELL-VESSELLA: It was August 2, so I'm not
12 sure.

13 MR. GRUDBERG: That was within my representation.

14 THE COURT: I got it.

15 You also mentioned, I thought, at the beginning of
16 your remarks that SIS had gotten a referral from psychology?

17 MS. SCANNELL-VESSELLA: Correct.

18 THE COURT: How did psychology get involved?

19 MS. SCANNELL-VESSELLA: So psychology, first, they had
20 encountered him.

21 DR. MILLER: Few times before that.

22 MS. SCANNELL-VESSELLA: I'm sorry, Judge. This is
23 Dr. Elissa Miller. She's our chief psychologist at MCC.

24 THE COURT: Maybe I could hear just a minute from you,
25 doctor, what your interactions have been with Mr. Moore, and

J8QHMOOC

1 how they came about.

2 DR. MILLER: So Mr. Moore started referring himself to
3 our department at the end of June. He self-referred a couple
4 of times with some symptoms of anxiety and concerns that people
5 related to his case might be on his unit and --

6 THE COURT: Meaning other inmates?

7 DR. MILLER: Yes.

8 THE COURT: Other prisoners?

9 DR. MILLER: Yes, that might be involved with his
10 case. And he was saying that he was set up for his current
11 charge, and he was talking about the roles multiple individuals
12 played in his incarceration. So he appeared a little bit
13 suspicious and anxious.

14 THE COURT: Do you have a date for his first contact?

15 DR. MILLER: That was 6/26.

16 THE COURT: June 26?

17 DR. MILLER: Yes.

18 THE COURT: So that would be roughly two weeks after
19 the trial?

20 DR. MILLER: Yeah. Is that correct?

21 THE COURT: I think that's right, yes.

22 DR. MILLER: And then on 7/11 he had self-referred
23 again.

24 THE COURT: Did he come to you before that date or was
25 that the first date?

J8QHMOOC

1 DR. MILLER: I think that was the first real contact
2 that we had. He brought himself to our attention.

3 THE COURT: I get it.

4 DR. MILLER: And then on 7/11 he referred himself
5 again and was reported to appear anxious, and he was talking
6 about the history of his case and how he believes he's being
7 unfairly accused of something he didn't do and --

8 THE COURT: At that time he would have already been
9 convicted of something. July?

10 DR. MILLER: Yes.

11 THE COURT: You're saying July 11?

12 DR. MILLER: Right. But I think what he had expressed
13 was he took a plea, and he said he was having a hard time with
14 that because he didn't feel he did what he pled out to and --

15 THE COURT: In this case?

16 DR. MILLER: Yes. Well, that's what I believe he was
17 referring to while he was in jail.

18 THE COURT: OK.

19 DR. MILLER: And that --

20 THE COURT: Yes, I recall. I recall the testimony.
21 Was there not a prior plea by Mr. Moore in Florida perhaps?

22 MR. VAINBERG: In Middle District of Florida, yes,
23 your Honor.

24 THE COURT: Got it.

25 DR. MILLER: So he took the plea instead of facing

J8QHMOOC

1 life, and he did note that he had fired his paid attorney and
2 now had a new attorney. He appeared anxious at that time when
3 he was being interviewed, and he had expressed that venting
4 about these difficulties made him feel better. So we weren't
5 overly concerned at that point in time.

6 THE COURT: Based on his comments to you?

7 DR. MILLER: Yes. That was 7/11. Then 7/24, we
8 decided to follow up. Maybe he did appear a little anxious, so
9 we said, let's just check on him and make sure he's OK. Then
10 he said that when he was going to be deported back to England,
11 he feared he would be killed by people that are connected with
12 his case there, and he was very fearful.

13 THE COURT: He didn't come to you with this. This is
14 when you contacted him?

15 DR. MILLER: When we followed up.

16 THE COURT: To find out?

17 DR. MILLER: Because he was anxious the session
18 before.

19 THE COURT: Got it, yes.

20 DR. MILLER: And he had stated while he was there that
21 he thought inmates were connected to people on the outside that
22 are somehow connected to his case, so some persecutory ideas.
23 That was on 7/24. Then on 8/2 -- we have an email, an inmate
24 to psychology email box so they can email our department. This
25 is when it came a little more concerning. That was on 8/2. At

J8QHMOOC

1 the same time the lieutenant, SIS, spoke with him, he sent an
2 email saying in caps, "He was very frightened by the way things
3 are developing and progressing, and he needs to be able to
4 speak with someone before things go too far."

5 THE COURT: Got it.

6 DR. MILLER: So, of course, we followed up with him,
7 and we let SIS know about this, about his concerns regarding
8 his safety and security. He said he did not want protective
9 custody at that time when he spoke to SIS. However, he said
10 he's fairly certain his emails are being hacked and his
11 situation is complicated, and he noted the involvement of
12 Bulgarians and Russians being after him and that inmates here
13 are connected to those individuals on the outside. So at that
14 point, we started getting a little more concerned. We followed
15 up with him again where he continued to report --

16 THE COURT: When you say you got a little more
17 concerned, so you --

18 DR. MILLER: That there might be some mental health
19 symptoms rather than just bona fide anxiety, you know, that
20 people experience while they're incarcerated. We started
21 seeing some persecutory ideas and increased levels of anxiety.

22 THE COURT: When that occurred, did you say, come back
23 next --

24 DR. MILLER: Oh, yeah, we scheduled him for a
25 follow-up, and that's why we have all these sessions with him.

J8QHMOOC

1 THE COURT: I get it. How many sessions would you say
2 you've had with him so far?

3 DR. MILLER: I wrote that down. One, two, three,
4 four, five -- six prior to him being placed on psychological
5 observation, where he is right now. He's been on that from
6 8/20 until the present.

7 THE COURT: I see. What does that entail?

8 DR. MILLER: That entails placement in a cell where
9 he's constantly observed. He's not on suicide watch because
10 he's not an imminent threat to suicidality at this time, but he
11 does display mental health symptoms that make us concerned for
12 him to be on a housing unit because when someone is paranoid or
13 has persecutory ideas, it may upset other inmates that may harm
14 him or he may harm someone else and because he thinks that they
15 are against him in some way, and I didn't want him placed in
16 the SHU because he was having some mental health problems. So
17 I thought it would be better if we kept him downstairs, and we
18 referred him for a more extensive psychiatric evaluation which
19 would involve the forensic study, not realizing he was in
20 pretrial at that time.

21 THE COURT: Not realizing that?

22 DR. MILLER: Well, when you have a pretrial study, we
23 do competency to stand trial and criminal responsibility type
24 evaluations. In this case we still have appropriate
25 evaluations we can do with him if you should order it, but we

J8QHMOOC

1 do have our concerns because he continues to express these
2 persecutory ideas, along with additional new persecutory ideas.
3 We had him seen by the psychiatrist. I'm going through all my
4 notes. But on 8/7 we saw him and then we saw him again on
5 8/14, and then we referred him to psychiatry because of our
6 concerns, to see if he could benefit from some psychotropic
7 medication to decrease his anxiety and the thoughts he was
8 having at the time.

9 So he was seen by Dr. Okafor. That was on 8/15. And
10 during the course of the session, Dr. Okafor stated: "After
11 thorough discussion, he refused to take suggested formulary BOP
12 psychotropic medication that might benefit him." So he
13 recommended that psychology continue to follow him closely. So
14 he refused to take the medication at that time, but Dr. Okafor
15 also had seen the same presentation that we did and gave him a
16 diagnosis suggestive of some thought processes that were
17 persecutory in nature. And we need to obviously rule out, as
18 you said before, what is factual and what is not factual, what
19 might be a false belief.

20 THE COURT: Yes.

21 DR. MILLER: So, yes.

22 THE COURT: Do any of your work or tests, either that
23 you've given or might give, deal with the question of whether
24 he is capable of representing himself in this litigation going
25 forward? Have you drawn any conclusion as to that?

J8QHMOOC

1 DR. MILLER: Well, that's why we wanted him to get one
2 of those forensic studies, because then they can spend a great
3 deal of time with him. They can administer various
4 psychological tests, personality, clinical tests, and tests to
5 rule out what might be true/not true, what's based in reality,
6 what's not, and observe him over a period of time and really
7 study him. So we thought that that would be beneficial.

8 Now, we have done competency to participate in his
9 sentencing. I have personally done those types of evaluations
10 in the past. We can also do another type of --

11 THE COURT: You did that for him, for Mr. Moore?

12 DR. MILLER: No, no, I've done this in the past
13 with --

14 THE COURT: Oh.

15 DR. MILLER: Even though he's not in pretrial, there's
16 other types of evaluations, and we can also do just a basic
17 study and do a conceptualization treatment recommendation that
18 will let me know how we could address those needs in the Bureau
19 of Prisons.

20 THE COURT: OK. So that's very helpful.

21 Anybody else want to share a thought? You don't have
22 to.

23 MS. SCANNELL-VESSELLA: Did you want to hear anything
24 else about SIS's determinations, Judge?

25 THE COURT: Do their determinations go to his ability

J8QHMOOC

1 to represent himself?

2 MS. SCANNELL-VESSELLA: No, I don't think so.

3 THE COURT: So that's number one. Number two, just
4 generally, did they find any threat, actual threat, or do they
5 conclude, maybe they don't, but if they do, do they conclude
6 one way or another whether these threats appear realistic or
7 unrealistic or --

8 MS. SCANNELL-VESSELLA: They have not found any
9 credible threat at MCC, and their recommendations are kind of
10 consistent with psychology's observations of Mr. Moore as well.

11 THE COURT: And the move of his -- is he alone, did
12 you say, or does he have a cellmate?

13 DR. MILLER: No, he's alone on psychological
14 observation where he's one on one with somebody watching him.

15 THE COURT: I got it.

16 All right. Mr. Moore, you want to add anything? You
17 don't have to.

18 THE DEFENDANT: No, I would like to, your Honor, if I
19 may.

20 We seem to be omitting the most recent event which
21 happened six days ago where I found myself in the unfortunate
22 position of being in a cell with two people trying to coax me
23 or tempt me into the cell with the offer of a free telephone
24 call, a free cell phone call in this instance. One of them was
25 a very large guy, 350 pounds, who has repeatedly tried to get

J8QHMOOC

1 me in a cell on my own, you know, puts his arm around me and
2 says: Come on, you want to use the phone? And trying to get
3 me in the cell. Meanwhile, the other one reaches for a rope
4 which is tied to the ventilator. And I'm in the cell now
5 between two people, and I realize almost instinctively that
6 this is a very, very serious situation. And the guy's going
7 for the rope and the other --

8 THE COURT: So what happened?

9 THE DEFENDANT: And I -- and I ducked down and back
10 out of the cell, and I said -- I couldn't process it. I said,
11 "I think it's a little early for a call."

12 THE COURT: It's what?

13 THE DEFENDANT: It's a little early for a telephone
14 call. It was about 9:15 to 9:20. And I went straight down to
15 the unit manager's office, and I actually called Mr. Vainberg's
16 office and left a message on his voice mail, which at the end
17 would have been something like this because I was extremely
18 shook up.

19 Later on the same day, on that day, early in the
20 morning and prior to that over the weekend, a number of things
21 had taken place which just struck me as odd, and in here now I
22 know it will sound paranoid especially after the views that
23 have been raised, but people started asking to borrow things
24 off me, you know. And that's unusual in a prison because
25 people don't -- because they don't get them back typically.

J8QHMOOC

1 The guy I had gone in the cell with, I'd only gone in the cell
2 with on the Friday night before, and he asked if he could
3 borrow, you know, some food, which amounted to \$6. Somebody
4 else asked if they could repay \$12 later. Somebody else on the
5 Monday morning, a guy who was washing a towel for me, came to
6 me and said could he get paid up front \$3 for washing a towel.
7 And I know all this seems very bizarre with small numbers, but
8 in prison they're significant. And I said no. I was just --
9 it was just all very odd. Then, of course, when this happened,
10 I thought maybe that was what it was about.

11 A new guy had come in the night before. The big guy
12 who appeared in the cell was from the original unit I'd been
13 placed on when I was admitted into the prison, which was called
14 11 South, and from the original tier. The guy who was admitted
15 the night before came and sat in front of me, staring at me,
16 and said, "You know, I've got seven children at home," and I
17 said, "Yes, they're -- these prison sentences are very
18 difficult with family," and so on. I asked him what he'd done,
19 how he ended up there. He said he was a collector for the --
20 collector for drug dealers. Just a very frightening-looking
21 guy. He'd arrived on the tier that opposite my cell on the
22 Monday night.

23 On the Monday around about midday, there was what's
24 known as mainline in the prison where the warden, assistant
25 warden, and so on, all arrive, and the unit manager's there

J8QHMOOC

1 also. The unit manager said that he'd done an inspection, and
2 the units were particularly untidy, and so he was ordering
3 what's known as a modify, which means you are locked behind the
4 gates of the tier with 15 other people. For me, that would
5 have meant, having just gone through this extremely traumatic
6 experience, I would have been locked in with the guy who did it
7 and the particularly frightening guy who'd arrived the night
8 before.

9 THE COURT: So going back to that experience, did
10 anybody harm you physically during the course of that
11 experience?

12 THE DEFENDANT: No, but there was a rope tied up in
13 the cell.

14 THE COURT: Yes, but --

15 THE DEFENDANT: They tried to get me in the cell.

16 THE COURT: Yes, I got all that. I just want to know
17 if anybody hurt you.

18 THE DEFENDANT: No, they didn't because I didn't give
19 them chance, your Honor.

20 THE COURT: What did you do, run out?

21 THE DEFENDANT: Yes. And I --

22 THE COURT: Did anybody try to stop you from going out
23 of the cell?

24 THE DEFENDANT: I ducked down because he got his hand
25 across my back. So I dropped down and just backed up and went

J8QHMOOC

1 and left and got out of the way.

2 THE COURT: OK. All right. I don't mean to cut you
3 off. I think for purposes of today's proceeding --

4 THE DEFENDANT: Your Honor, may I say one very
5 important thing?

6 THE COURT: Yes.

7 THE DEFENDANT: The same big guy the week before, when
8 I'd just been moved to this unit, had come in my cell on the
9 Friday morning at around 7:30, uninvited, unauthorized, with
10 the lights off. And when I caught him coming in the cell, I
11 was using the bathroom. That's why he didn't see me. And I
12 went outside, and I said, "What are you doing in my cell?" And
13 he immediately said to me, "You've got more charges, haven't
14 you? You've got hidden charges?"

15 I said, "What are you talking about?"

16 "You were on a unit with my codefendant, Mr. Haddow."

17 "You know that I don't have more charges."

18 He said, "Yes, you do. You're a chomo. You're a
19 child molester. You're a sex trafficker. You've been
20 trafficking young girls for prostitution, age 11 and 12," and
21 this is in front of four or five very big body building-type
22 white American guys on Tier 2.

23 And he carried on, he said, "There's all sorts of
24 stories about your branding them with horse irons," and he
25 said -- I said, "Listen, whoever has said this, you take me to

J8QHMOOC

1 them right now." And he said, "An officer told me." I said,
2 "If an officer told you, take me right now."

3 THE COURT: I get it.

4 All right. So here's what I would like to accomplish,
5 and I'm not going to be able to do it today -- oh, Mr. Vainberg
6 and Mr. Bell, did you want to add anything? You don't have to.

7 MR. VAINBERG: I don't think so, your Honor.

8 THE COURT: Just answer this question. In any of your
9 investigation or -- that may be the wrong term, but looking
10 into this matter, did you come up with any credible evidence
11 that Mr. Moore was in danger?

12 MR. VAINBERG: We did not, your Honor.

13 THE COURT: OK.

14 MR. VAINBERG: And --

15 THE COURT: I'm sorry.

16 MR. VAINBERG: Just for the record, given what we've
17 heard, there are no hidden charges lodged against Mr. Moore for
18 sex trafficking or any other thing.

19 THE COURT: I get it.

20 So, Mr. Moore, there's two issues that I have. The
21 immediate question is whether you were going to be pro se or
22 continue with your current counsel or have other counsel
23 appointed, and resolution of that issue has two aspects. One
24 is the financial. You'd have to fill out an affidavit that you
25 qualified, and I don't know if you do, and it would be under

J8QHMOOC

1 oath subject to the penalties of perjury. That's number one.

2 Number two is I think it's prudent to have some
3 psychological evaluation to help me determine whether the
4 psychologist or psychiatrist at the MCC believes that you would
5 be able to represent yourself.

6 Do you have any problem going through that evaluation?

7 THE DEFENDANT: Not at all, your Honor, and I'm very
8 comfortable where I am because I feel safe being on my own.

9 Your Honor, may I address Mr. Vainberg's point about
10 no extra charges?

11 THE COURT: I have enough for today. I have enough
12 for today.

13 So, defense counsel who is still counsel of record,
14 maybe you could assist in that effort, and I think I certainly
15 would not relieve you as counsel until we determine who the
16 next counsel is going to be, if any.

17 MR. GRUDBERG: Your Honor, I'm of course prepared to
18 remain available to the Court and available to Mr. Moore. I
19 think it would be wisest under the circumstances -- we do have
20 an ability to connect through the Bureau of Prisons' email
21 system. I would be inclined to follow Mr. Moore's lead in
22 terms of the degree to which he wishes my advice and assistance
23 with regard to the two components that your Honor has
24 identified, one, the financial affidavit aspect of seeking
25 legal aid or panel counsel and, two, the whys and wherefores of

J8QHMOOC

1 what sounds like a medical psychiatric evaluation specifically
2 directed to the question of whether Mr. Moore has impediments
3 of that kind to his ability to advocate for himself.

4 THE COURT: Those are exactly the issues I want to
5 deal with first.

6 MR. GRUDBERG: I, of course, understand and am
7 prepared to remain in the case unless and until discharged.
8 The second part of it, in terms of the nature and depth of my
9 assistance to Mr. Moore, I am 100 percent willing to assist him
10 in those respects. I guess I'm somewhat uncertain as to how to
11 go forward with him, and I think the appropriate thing would be
12 for me to await his contact by the CorrLinks email system or
13 some other manner.

14 THE COURT: You can contact him. I don't anticipate a
15 lot of effort in this short term. One, I think with respect to
16 appointed counsel, it's a form.

17 MR. GRUDBERG: Right.

18 THE COURT: I don't know if you have it or the BOP has
19 it or someone will get that to Mr. Moore, and he can fill that
20 out. But, second, I don't think you would have a huge role to
21 play in any evaluation of his competency other than to perhaps
22 respond to a question about how long will it take, for
23 example --

24 MR. GRUDBERG: Right.

25 THE COURT: -- what does the process entail, but I do

J8QHMOOC

1 think that psychology and BOP staff would know how to follow up
2 with Mr. Moore, and I take it you're going to follow up with
3 him --

4 DR. MILLER: Every day.

5 THE COURT: -- going forward at least --

6 DR. MILLER: Every day while he's on psych obs. If he
7 goes for the study, we'll keep him on the entire time.

8 THE COURT: How long do you think it will take to have
9 a study like that accomplished?

10 MS. SCANNELL-VESSELLA: Judge, I think it depends
11 because there's 3552 which is -- 3552(b), which allows the
12 Court to order basically more information that would assist it
13 with sentencing preparation, but because I don't know that --
14 since this isn't competency to stand trial or anything like
15 that, it doesn't fit into one of the kind of nice 4241,
16 4242 boxes.

17 THE COURT: Yes, but seems to me that, from what I've
18 heard from psychology, they could form an opinion as to whether
19 or not they feel he's competent to represent himself.

20 DR. MILLER: You can do a 4241, sorry, and specify in
21 the 4241 that you want not competency to stand trial but
22 competency to participate in his sentencing proceedings.

23 THE COURT: Yes. So if you would submit that to me, a
24 proposed form of -- I take it you're looking for an order from
25 the Court --

J8QHMOOC

1 MS. SCANNELL-VESSELLA: Correct.

2 THE COURT: -- to initiate this process. I'd be happy
3 to do it.

4 MS. SCANNELL-VESSELLA: OK.

5 THE COURT: It's not a lengthy document, I don't
6 think.

7 MS. SCANNELL-VESSELLA: No.

8 THE COURT: If you could draft one up, I'll take a
9 look and maybe modify it or not once that happens, and I'd be
10 happy to do it today if you got it to me today. How long does
11 such an evaluation, you think, likely take? I'm trying to
12 figure out when we should come back here.

13 MS. SCANNELL-VESSELLA: I think it depends a bit
14 because it's bed space, because it's going to have to be done
15 either -- it would be done at a forensic site.

16 So what do you think?

17 DR. MILLER: It would depend on --

18 THE COURT: Out of the BOP, you mean?

19 DR. MILLER: At one of our medical centers.

20 MS. SCANNELL-VESSELLA: No.

21 DR. MILLER: It might be beneficial for him to be
22 evaluated just -- they've never seen him before and he hasn't
23 been on psych obs with us for a period of time in getting that
24 opinion. The 4241 will move faster than the 3552, because the
25 4241, we have 30 days, where the 3552, you have 60 days.

J8QHMOOC

1 THE COURT: As soon as you get it to me, I'll sign it.

2 Counsel, does that sound OK to you?

3 MR. GRUDBERG: It does, your Honor.

4 I wanted to clarify. Mr. Moore has reminded me my
5 prior remarks about email communications, I think, are no
6 longer operative given his current conditions at the BOP -- or
7 at the MCC as described by my colleagues. I would be prepared
8 to go down and meet with him in person this week. I tried that
9 last week. I think there was apparently some confusion, but
10 Ms. Scannell-Vessella has indicated that was a miscommunication
11 or something, so there should not be anything about his current
12 conditions of confinement that should prevent his being
13 produced to me in the lawyer's visiting room, and I will go
14 down this week to meet with him.

15 THE COURT: I'm sure counsel for BOP will help you
16 with that.

17 MR. GRUDBERG: I will give her advance notice, Judge.

18 THE COURT: Mr. Moore, is that OK with you, that
19 arrangement?

20 THE DEFENDANT: Certainly, your Honor.

21 THE COURT: I would ask you -- it doesn't sound like
22 it would compromise you in any way to cooperate with your
23 attorneys and with the attorneys for the BOP and the psychology
24 staff. It's mostly a BOP analysis that I'm looking for. I
25 don't think your attorney has a whole lot to do in that

J8QHMOOC

1 process.

2 THE DEFENDANT: I understand, your Honor. Thank you.

3 THE COURT: So it's agreeable to you.

4 Yes, Mr. Bell?

5 MR. BELL: Two quick things, your Honor. One, it may
6 be worth our perhaps collectively checking in with your Honor
7 by letter at a date certain once we have a better sense of the
8 logistical requirements, the examination that's going to be
9 done at another site in particular, just so we can both keep
10 things going while reacting to whatever the realities are.

11 THE COURT: Probably what I'll do, I think I will do
12 now, is to set a date, just so we don't lose track of
13 everybody, for us all to come back here. It will be 30 days
14 out plus, I guess, give or take.

15 MR. BELL: OK.

16 THE COURT: Then if anything happens in the interim, I
17 would ask all or any of you to let me know if you think it's
18 should be brought to my attention.

19 MR. BELL: The other thing that I was going to note,
20 just in case things go that way, and we recognize that they
21 won't necessarily, is that we believe that the Federal
22 Defenders would actually be conflicted from Mr. Moore's case.
23 So that would presumably be --

24 THE COURT: Did you say "conflicted"?

25 MR. BELL: Conflicted, yes, your Honor.

J8QHMOOC

1 THE COURT: I think he said they will have a conflict.

2 And why is that, you think?

3 MR. BELL: I don't want to get too detailed here, but
4 they had an interest with respect to other witnesses, another
5 witness involved in the investigation.

6 THE COURT: All right.

7 MR. BELL: So that would presumably go to the CJA
8 wheel if we were to go that far.

9 THE COURT: I got you.

10 MR. BELL: We recognize that it may not.

11 THE COURT: I get it. So let's then set a date. How
12 is Wednesday, October 2, 2019, for a status conference? But my
13 hope is and expectation that we'll be quite far along, and on
14 that date, BOP would be able to tell me what they think about
15 the viability of Mr. Moore representing himself.

16 MS. SCANNELL-VESSELLA: Yes, Judge.

17 THE COURT: I add, this is just for whatever it's
18 worth, Mr. Moore, even if you are able to do it, in my own
19 experience -- again, I'll start by saying you have the right to
20 represent yourself if you wish. I feel in this instance or in
21 this case that it wouldn't, would not, be in your best
22 interest, but it's your determination, assuming that there's no
23 impediment for you making decisions.

24 THE DEFENDANT: Thank you, your Honor. My interest is
25 to pursue a clean sheet, not to go pro se. That was merely a

J8QHMOOC

1 means of ensuring my message got out of the facility.

2 THE COURT: I got it. Why don't you give some thought
3 to whether there is a viable way you could go forward with
4 Mr. Grudberg, as among other options that might be available to
5 you. What Mr. Bell is saying, he doesn't think Federal
6 Defenders would be able to pick up your case, but we don't know
7 that for sure. If you were eligible and able, it would be a
8 CJA lawyer.

9 Let's say 11:00 a.m. on October 2. I'm going to put
10 down for BOP recommendation re pro se status.

11 Mr. Bell, if you all find out something and defense
12 counsel is available or known earlier than that, just let me
13 know. Otherwise, the sentencing date, the current sentencing
14 date, is vacated. The status conference will be Wednesday,
15 October 2, at 11:00 a.m., devoted principally to the issue of
16 whether or not BOP psychology believes that Mr. Bell is
17 capable -- I don't know if "capable" is the right word or
18 "competent" is the right word to represent himself, but you'll
19 figure it out.

20 MR. VAINBERG: Your Honor, just to confirm what I
21 think you've just said, so it sounds like the confines of the
22 mental health evaluation is whether Mr. Moore is competent to
23 represent himself, not competent in any other broader sense, is
24 that accurate?

25 THE COURT: Well, I leave that up to BOP and

J8QHMOOC

1 Mr. Moore. If they want to go beyond that or -- and
2 particularly if Mr. Moore is having some psychological issues
3 not related to the competence necessarily, you and he figure
4 out a way to treat them perhaps or --

5 DR. MILLER: That would be included in that report.
6 We always include treatment recommendations.

7 THE COURT: OK. Great.

8 DR. MILLER: Yeah.

9 THE COURT: Yes, sir.

10 MR. GRUDBERG: Judge, just one other item. I think on
11 the September conference we had anticipated setting a date.
12 For the purposes of the probation department, I wanted to
13 advise the Court that Ms. Tyler of probation has conducted the
14 presentence interview. There are obviously a number of open
15 items pending with her. It is my understanding she is away on
16 vacation this week. What I would propose to do would be for me
17 to reach out to her and give her a summary of this process and
18 the schedule going forward and ask her to be in touch with the
19 Court if she had any questions as to where things were.

20 THE COURT: Or with BOP counsel. So we're putting not
21 a hold so much on the presentence investigation report, but we
22 would certainly want that report when it's finalized to include
23 all of these issues that we've been discussing.

24 MR. GRUDBERG: Yeah, I just do think, for the purposes
25 of his participating in this process, I think under the

J8QHMOOC

1 circumstances it would be appropriate to table it while this
2 review is underway.

3 THE COURT: OK.

4 MR. GRUDBERG: Thank you, Judge.

5 THE COURT: We're saying that that's on hold for now.

6 Good to see you all. I'll see everybody on October 2
7 at 11:00 a.m. Thanks a lot.

8 MR. GRUDBERG: Thank you, your Honor.

9 MR. VAINBERG: Thank you.

10 (Adjourned)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25